

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 10

Juvenile Dispositions

10.12 Restitution

E. Persons or Entities Entitled to Restitution

On page 238, add the following text to the end of the first paragraph:

MCL 712A.30(1)(b) states in part:

“For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or other legal entity that suffers direct physical or financial harm as a result of a juvenile offense.”

MCL 780.794(1)(b) contains substantially similar language.

In *In re McEvoy*, ___ Mich App ___, ___ (2005), the trial court ordered the juvenile and his parents to pay restitution to a school district’s insurer.* On appeal, the juvenile’s parents argued “that pursuant to the definition of ‘victim’ in MCL 712A.30(1)(b), the school district is a victim for purposes of only ‘subsections (2), (3), (6), (8), (9), and (13)’ and therefore parents may not be required to pay restitution under subsection (15) to a ‘non-individual’ victim.” The Court of Appeals rejected this argument, stating:

“Foremost in negating appellants’ logic is the fact that the word victim does not appear in subsection (15), and therefore there is no need to define the term for purposes of that subsection. Further, the key language in the definition of the term ‘victim’ is identical in both the juvenile code and the CVRA[.] . . . Subsection (2) is the key substantive provision providing for restitution and that subsection expressly states that the court shall order that the juvenile ‘make full restitution to any victim,’ which by definition includes a legal entity such as the school district.” [Citations and footnotes omitted.] *McEvoy*, *supra* at ___.

*For more information on ordering a parent to pay restitution, see Section 10.12(L).

More importantly, a review of the restitution provisions in both the Juvenile Code and CVRA reveal that the subsections not applicable to the definition of “non-individual” victims have no logical application to legal entities (e.g., restitution for physical or psychological injuries or death) or are primarily procedural.

Insert the following text before the April 2005 update to page 239:

In *In re McEvoy*, ___ Mich App ___ (2005), the trial court ordered a juvenile’s parents to pay restitution to a school district’s insurer for damage caused by the juvenile setting fire to a high school. The restitution amount was based on the amount the insurer paid to the insured under the insurance policy—the replacement value of the damaged property. The Court of Appeals vacated the restitution order and remanded for redetermination of the amount of loss actually suffered by the school district. *Id.* at ___. The Court construed MCL 712A.30(8), which, like MCL 780.794(8), requires a court to order restitution to a legal entity that has compensated a direct victim “for a loss incurred by the [direct] victim to the extent of the compensation paid for that loss.” The Court stated that under MCL 712A.30(8), “an entity that compensated a victim ‘for a loss incurred by the victim’ is entitled to receive restitution ‘to the extent of the compensation paid for *that* loss,’ clearly meaning the loss of the victim, not the loss of the compensating entity.” *McEvoy, supra* at ___. The Court noted that the statutory provisions for calculating restitution for property damage or destruction use the value of the property damaged or destroyed—the victim’s actual loss—as the basis for a restitution order. The Court stated:

“Under the circumstances of the case, the loss of the compensating entity is based on the commercial transaction involved, i.e., the school district’s purchase of replacement coverage insurance, rather than the loss resulting from the fire, which underscores that the result is incongruent with the purpose of the statute. Although the amount of restitution is within the discretion of the trial court, the court erred to the extent it ordered restitution to SET-SEG on the basis of the amount SET-SEG compensated the school district, rather than the amount of the actual loss sustained by the school. Restitution must be based on the value of the property damaged, i.e., the victim’s actual loss.” *Id.*

CHAPTER 10

Juvenile Dispositions

10.12 Restitution

L. Hearings on Restitution Payable by Juvenile's Parent

On page 246 after the third paragraph, insert the following text:

The Juvenile Code does not limit the amount of restitution for which a supervisory parent may be held liable. *In re McEvoy*, ___ Mich App ___, ___ (2005). In *McEvoy*, a juvenile pled guilty to arson of real property and malicious destruction of personal property for setting fire to a high school. The trial court ordered the juvenile and his supervising parents to pay restitution but limited the parents' liability to their insurance proceeds. The juvenile's parents appealed the order, arguing that the Parental Liability Act, MCL 600.2913,* when read along with MCL 712A.30, limits a parent's liability to \$2,500.00 in civil court actions. The Court of Appeals rejected the parents' argument, indicating that the Juvenile Code previously contained limits on a parent's liability, and the Legislature removed those limits. Furthermore, MCL 712A.30(9) provides that the amount of restitution paid to a victim must be set off against any compensatory damages recovered in a civil proceeding, clearly recognizing that restitution is independent of any damages sought in a civil proceeding.

In *McEvoy*, the parents also argued that because MCL 712A.30(15) allows the court to impose unlimited restitution without a showing of fault on the part of the supervisory parent, it unconstitutionally deprives the parents of substantive due process. Applying a "rational basis" standard of review, the Court of Appeals disagreed. The Court first noted that although the Juvenile Code does not contain a limit on the amount a parent may be ordered to pay, it does limit imposition of liability to a parent having supervisory responsibility of the juvenile at the time of the criminal acts. In addition, a court must consider a parent's ability to pay and may cancel all or part of the parent's obligation if payment will impose a manifest hardship. Thus, parental liability may not be imposed solely based on a familial relationship.

"The Legislature has clearly sought to link *liability* with *responsibility* in a reasonable, but purposeful manner, rather than burdening society generally or the victim, in particular, for the costs of a juvenile's illegal acts. The statute reasonably imposes liability on the parent responsible for supervising the child." *McEvoy*, *supra* at ___.

The Court concluded that the provisions for restitution by a supervisory parent bear a reasonable relationship to a permissible legislative objective; therefore, there is no violation of the parents' due process rights.

*See Section 25.4 for a brief discussion of MCL 600.2913.

The parents also argued “that MCL 712A.30 is an unconstitutional bill of attainder because it punishes parents for their status, not their conduct.” *McEvoy, supra* at _____. A bill of attainder is a “legislative act that determines guilt and inflicts punishment upon an identifiable group of individuals without the protections of a judicial trial.” *Id.* In order to determine whether the statute acts as a bill of attainder, the court must determine if the statute “inflicts forbidden punishment.” The Court of Appeals determined that the restitution provisions of MCL 712A.30 “do not fall within the historical meaning of legislative punishment and are not validly characterized as punishment in the constitutional sense.” *McEvoy, supra* at _____. The restitution provisions were designed to serve a nonpunitive purpose: to enable victims to be fairly compensated for losses. The Court also noted that MCL 712A.30(16) and (17) are specific provisions to mitigate any undue financial burden imposed upon parents. The Court concluded that given the nonpunitive nature of the sanctions and the statute’s purpose and effect, it does not act as a bill of attainder.

CHAPTER 24

Appeals

24.10 Appointment of Appellate Counsel

Insert the following text before the January 2005 update to page 486:

In *Halbert v Michigan*, 545 US ____ (2005), the United States Supreme Court concluded that an indigent defendant convicted by plea may not be denied the appointment of appellate counsel to seek a discretionary appeal of his or her conviction. *Halbert* overrules the Michigan Supreme Court's decisions in *People v Harris*, 470 Mich 882 (2004) and *People v Bulger*, 462 Mich 495 (2000), and it nullifies MCL 770.3a, the statutory provision that addresses the appointment of counsel to indigent defendants convicted by plea.

Specifically, the *Halbert* Court held "that the Due Process and Equal Protection Clauses require the appointment of counsel for defendants, convicted on their pleas, who seek access to first-tier review in the Michigan Court of Appeals." *Halbert, supra* at _____. The *Halbert* Court examined Michigan's appellate court system and noted that an appeal to the Michigan Court of Appeals, whether by right or by leave, is a defendant's first-tier appeal and that, to some degree, the Court of Appeals' disposition of these appeals involves a determination of the appeals' merit. The *Halbert* Court noted that "indigent defendants pursuing first-tier review in the Court of Appeals are generally ill-equipped to represent themselves," a critical fact considering that the Court of Appeals' decision on those defendants' applications for leave to appeal may entail an adjudication of the merits of the appeal. Said the Court:

"Whether formally categorized as the decision of an appeal or the disposal of a leave application, the Court of Appeals' ruling on a plea-convicted defendant's claims provides the first, and likely the only, direct review the defendant's conviction and sentence will receive." *Halbert, supra* at _____.

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CHAPTER 2

Jurisdiction, Transfer, and Venue

2.17 Transfer of Jurisdiction in Status Offense and “Wayward Minor” Cases Involving Indian Children

A. Determining the Applicability of the Indian Child Welfare Act and MCR 3.980 in a Specific Case

On page 38 immediately before subsection (B), insert the following text:

An “Indian tribe” means “any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary [of the Interior] because of their status as Indians[.]” 25 USC 1903(8). The court determines whether a tribe is an “Indian tribe.” *In re NEGP*, 245 Mich App 126, 133-34 (2001).

In *In re Fried*, ___ Mich App ___, ___ (2005), the respondent claimed that the trial court erred in failing to apply ICWA to the proceedings because the child was eligible for membership in the “Lost Cherokee Nation.” The Court of Appeals held that “because the tribe to which respondent belongs is not a tribe recognized as eligible for services provided to Indians by the Secretary of the Interior, it is not an ‘Indian tribe’ within the meaning of the ICWA. 25 USC 1903(8), (11).” *Fried, supra*.

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CHAPTER 7

Pretrial Proceedings in Delinquency Cases

7.6 Selected Search and Seizure Issues

Warrantless searches of students by school officials.

On page 156, before the paragraph beginning “**Warrantless searches of lockers. . .**,” insert the following text:

In Beard v Whitmore Lake School District, ___ F3d___ (CA 6, 2005), school officials conducted a strip search of all of the students in a gym class in an attempt to find money that was reported missing. The Sixth Circuit held that the searches violated the Fourth Amendment because “[t]he highly intrusive nature of the searches, the fact that the searches were undertaken to find missing money, the fact that the searches were performed on a substantial number of students, the fact that the searches were performed in the absence of individualized suspicion, and the lack of consent, taken together, demonstrate that the searches were not reasonable.”

CHAPTER 25

Recordkeeping & Reporting Requirements

25.1 Family Division Records

On page 489, replace the last sentence in the second paragraph and the bulleted list with the following text:

*Effective May 1, 2005.

The Michigan Supreme Court Case File Management Standards and MCR 8.119(D)(1)(c) require a register of actions to contain specific information. MCR 8.119(D)(1)(c)* states:

“Register of Actions. The clerk shall keep a case history of each case, known as a register of actions. The register of actions shall contain both pre- and post-judgment information. When a case is commenced, a register of actions form shall be created. The case identification information in the alphabetical index shall be entered on the register of actions. In addition, the following shall be noted chronologically on the register of actions as it pertains to the case:

- (i) the offense (if one);
- (ii) the judge assigned to the case;
- (iii) the fees paid;
- (iv) the date and title of each filed document;
- (v) the date process was issued and returned, as well as the date of service;
- (vi) the date of each event and type and result of action;
- (vii) the date of scheduled trials, hearings, and all other appearances or reviews, including a notation indicating whether the proceedings were heard on the record and the name and certification number of the court reporter or recorder present;
- (viii) the orders, judgments, and verdicts;
- (ix) the judge at adjudication and disposition;
- (x) the date of adjudication and disposition; and
- (xi) the manner of adjudication and disposition.

“Each notation shall be brief, but shall show the nature of each paper filed, each order or judgment of the court, and the returns showing execution. Each notation shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.”

April 2005

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CHAPTER 10

Juvenile Dispositions

10.13* Restitution

E. Persons or Entities Entitled to Restitution

Insert the following text before the paragraph beginning “**Individuals or entities that have provided services . . .**” on page 239:

In *People v Byard*, ___ Mich App ___, ___ (2005), the trial court ordered the defendant to pay full restitution to the victim’s insurance company, Allstate Insurance, in the amount of \$659,128.09. On appeal, the defendant argued that because Allstate was reimbursed by the Michigan Catastrophic Claims Association (MCCA) for all of its losses over \$250,000.00, Allstate was only entitled to \$250,000.00. Although the MCCA did not file a claim to receive restitution, the Court amended the restitution order to provide \$250,000.00 to Allstate, and the remaining \$409,128.09 directly to the MCCA.

*Renumbered
by January
2005 update to
page 231.

*Renumbered
by January
2005 update to
page 231.

10.13* Restitution

I. Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

Triple restitution for serious bodily impairment or death of a victim.

Insert the following text after the August 2004 update to this subsection:

A court may order up to triple the amount of any other restitution allowed under the CVRA, including restitution payable to insurance companies that have compensated the direct victim for losses incurred as a result of the offense. *People v Byard*, ___ Mich App ___ (2005). In *Byard*, the defendant was convicted of operating a motor vehicle while visibly impaired causing serious injury. It was undisputed that the victim suffered a serious impairment of body function. Defendant was ordered to pay \$659,128.09 to an insurance company and \$280,000.00 to the direct victim of the offense, \$250,000.00 of which was for “pain and suffering under MCL 780.766(5).” The Court of Appeals upheld the restitution order, stating:

“Defendant says that, because the victim did not suffer any out-of-pocket expenses, no restitution was ‘otherwise allowed under this section.’ MCL 780.766(5). However, the trial court ordered defendant to pay \$659,128.09 to Allstate Insurance Company for medical expenses and lost wages paid for the victim. MCL 780.766(4)(a) & (c) allows a court to award restitution for medical bills and lost wages. MCL 780.766(8) allows courts to award restitution to any person, government entity, or business or legal entity which compensates the victim for losses arising out of a defendant’s criminal conduct. Therefore, the award of restitution to Allstate was restitution ‘otherwise allowed under this section,’ and the \$659,128.09 award could potentially be tripled under MCL 780.766(5). Thus, the trial court did not err when it awarded \$250,000 to the victim under MCL 780.766(5).”

CHAPTER 11

Paying the Costs of Juvenile Proceedings

11.1 County, State, and Federal Sources of Funding

On page 265, before the last paragraph, insert the following text:

The 50% FIA reimbursement of annual expenses does not include reimbursement for counties' capital expenditures. *Ottawa County v Family Independence Agency*, ___ Mich App ___, ___ (2005). In *Ottawa County*, eleven Michigan counties filed suit seeking reimbursement from the FIA for capital expenditures that included building, equipping, or improving juvenile detention facilities. The Court of Appeals concluded that reimbursement of a county's expenditure is conditioned upon meeting several requirements, including compliance with FIA's administrative rules and enabling statute and FIA's policies. Moreover, the Court noted that FIA is required to develop a system of reporting expenditures that only allows reimbursement "based on care given to a specific, individual child." MCL 400.117a(8). Relevant administrative rules and policies allow reimbursement of expenses necessary to provide direct services to children but severely limit reimbursement of capital expenditures because such expenditures are not attributable to the care of individual children. The Court of Appeals also concluded that FIA's failure to reimburse the counties for their capital expenditures did not violate the Headlee Amendment, Const 1963, art 9, §29. *Ottawa County, supra* at ___.

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CHAPTER 7

Pretrial Proceedings in Delinquency Cases

7.9 Raising Alibi or Insanity Defenses

On page 166, before subsection (A), insert the following text:

In *In re JLE*, unpublished opinion per curiam of the Court of Appeals, decided February 8, 2005 (Docket No. 250363), the Court of Appeals held that MCL 330.2050 does not apply to juvenile proceedings. MCL 330.2050 requires the court to “immediately commit any person who is acquitted of a criminal charge by reason of insanity to the custody of the center for forensic psychiatry . . .” to determine whether an order of hospitalization or admission is appropriate. In *JLE*, a juvenile was charged with assault with intent to commit murder and possession of a weapon in a weapon-free school zone. The trial court found the juvenile “‘not criminally responsible’ because ‘he could not conform his actions to the requirements of society.’” The trial court then dismissed the petition and released the juvenile to his father for transport to an inpatient mental health treatment facility in another state. The petitioner appealed, claiming that once the trial court found the juvenile not guilty by reason of insanity, the trial court was required to commit the juvenile to the Center for Forensic Psychiatry pursuant to MCL 330.2050. The Court of Appeals affirmed the trial court’s decision and stated:

“Assuming arguendo that the insanity defense applies to juvenile proceedings, see *In re Ricks*, 167 Mich App 285, 289-293; 421 NW2d 667 (1988), we are not persuaded that MCL 330.2050 also applies. . . .

* * *

“Just as the Court in *In re Carey* held that the Mental Health Code provisions concerning competency evaluations for ‘a defendant to a criminal charge’ were not binding with respect to juvenile cases, we conclude here that the Mental Health Code provision regarding

a person ‘who is acquitted of a criminal charge’ by reason of insanity does not apply to juvenile proceedings.”

The Court of Appeals also noted that MCL 330.2050 should not be used as a “guide” in juvenile cases because MCL 330.1498a et seq. apply to hospitalization of “emotionally disturbed minors.”

January 2005

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CHAPTER 2

Jurisdiction, Transfer, and Venue

2.13 Jurisdiction and Authority Over Adults

Replace the quotation of MCL 712A.6 at the top of page 34 with the following quotation:

“The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082,* and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.”

*MCL 600.1060 to 600.1082 govern drug treatment courts. See the new Section 10.10, below, for information on drug treatment courts.

CHAPTER 4

Diversion and Consent Calendar Procedures

4.3 Requirements of the Crime Victim's Rights Act

D. Required Procedures Before Removing a Case From the Adjudicative Process

On page 77, insert the following text immediately before subsection (E):

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If an offender is admitted to a drug treatment court, adjudication of his or her offense may be deferred. MCL 600.1070(1)(a)–(c).

In addition to the rights conferred upon a victim by the Crime Victim's Rights Act, a drug treatment court must permit a victim and others to submit a written statement to the court regarding whether a juvenile should be admitted into a drug treatment court. MCL 600.1068(4)* states:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

See the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

*Effective
January 1,
2005. 2004 PA
224.

CHAPTER 8

Pleas of Admission or No Contest in Delinquency Proceedings

8.7 Taking Pleas Under Advisement and Plea Withdrawal

On page 191, insert the following text after the quote of MCR 3.941(D):

Withdrawal of plea after denial of admittance into drug treatment court.

Effective January 1, 2005, 2004 PA 224 created drug treatment courts.* If a juvenile is denied admission to a drug treatment court after he or she has admitted responsibility and taken the other necessary steps for admission, the juvenile is entitled to withdraw his or her admission of responsibility. MCL 600.1068(5) states:

“An individual who has waived his or her right to a preliminary examination and has pled guilty or, in the case of a juvenile, has admitted responsibility, as part of his or her application to a drug treatment court and who is not admitted to a drug treatment court, shall be permitted to withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, shall be permitted to withdraw his or her admission of responsibility.”

*See the January 2005 update that added Section 10.10 for more information on drug treatment courts.

CHAPTER 10

Juvenile Dispositions

10.7 Victim Impact Statements

Insert the following text on page 219 immediately before Section 10.8:

Written statements regarding admission of juvenile to drug treatment court. In addition to the rights conferred upon a victim by the Crime Victim's Rights Act, a drug treatment court must permit a victim and others to submit a written statement to the court regarding whether a juvenile should be admitted into a drug treatment court. MCL 600.1068(4)* states:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

See the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

*Effective
January 1,
2005. 2004 PA
224.

CHAPTER 10

Juvenile Dispositions

10.9 Dispositional Options Available to Court

C. In-Home Probation

Replace the second sentence of the first paragraph on page 221 with the following text:

As used in MCL 712A.18(1)(b),* “related” means:

“an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. This placement of the child with the parent of a man whom the court has found probable cause to believe is the putative father is for the purposes of placement only and is not to be construed as a finding of paternity or to confer legal standing.”

Insert the following text on page 221 at the end of the second paragraph:

Effective January 1, 2005, MCL 712A.18(1)(b) was amended* to allow the court to order a juvenile to participate in a drug treatment court as a term of probation. Please see the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

*Effective
December 28,
2004. 2004 PA
475.

*2004 PA 221.

CHAPTER 10

Juvenile Dispositions

10.9 Dispositional Options Available to Court

L. Orders Directed to Parents and Other Adults

On page 230, before the paragraph beginning “**Notice and hearing requirements**,” insert the following text:

Order to parent or guardian of a juvenile admitted to drug treatment court. Effective January 1, 2005, 2004 PA 224 created drug treatment courts. If a juvenile is admitted to a drug treatment court, the court also has jurisdiction over the parent or guardian of the juvenile. MCL 712A.6* states:

*Effective
January 1,
2005. 2004 PA
221.

*MCL
600.1060 to
600.1082
govern drug
treatment
courts.

“The court has jurisdiction over adults as provided in this chapter and as provided in . . . MCL 600.1060 to 600.1082,* and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.”

*Effective
January 1,
2005. 2004 PA
224.

MCL 600.1070(2)* states, in part:

“In the case of a juvenile participant, the court may obtain jurisdiction over any parents or guardians of the juvenile in order to assist in ensuring the juvenile’s continued participation and successful completion of the drug treatment court, and may issue and enforce any appropriate and necessary order regarding the parent or guardian of a juvenile participant.”

CHAPTER 10

Juvenile Dispositions

On page 231, insert the following new section and renumber the remaining sections accordingly:

10.10 Juvenile Drug Treatment Court

Effective January 1, 2005,* the Family Division may adopt a drug treatment court under MCL 600.1060 to MCL 600.1082 of the Revised Judicature Act. MCL 600.1062(2). This legislation also allows district and circuit courts to establish drug treatment courts. MCL 600.1062(1). Juvenile drug treatment courts are subject to the same requirements and procedures as adult drug treatment courts except as specifically provided in MCL 600.1060 to MCL 600.1082. A juvenile court may order, as a condition of probation, that a juvenile participate in a drug treatment court. MCL 712A.18(1)(b). If a juvenile is admitted into a drug treatment court, the juvenile's disposition may be deferred and, in some cases, dismissed upon successful completion of drug treatment court.

*2004 PA 224.

A. Admission to Drug Treatment Court

"Each drug treatment court shall determine whether an individual may be admitted to the drug treatment court." MCL 600.1064(1). However, a violent offender is not eligible for drug treatment court. *Id.* A "violent offender" is a person who meets either of the following criteria:

"(i) Is currently charged with or has pled guilty to, or, if a juvenile, is currently alleged to have committed or has admitted responsibility for, an offense involving the death of or a serious bodily injury to any individual, or the carrying, possessing, or use of a firearm or other dangerous weapon by that individual, whether or not any of these circumstances are an element of the offense, or is criminal sexual conduct of any degree.

"(ii) Has 1 or more prior convictions for, or, if a juvenile, has 1 or more prior findings of responsibility for, a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm." MCL 600.1060(g)(i)–(ii).

No individual has a right to be admitted into a drug treatment court. MCL 600.1064(1).

In order to be admitted to drug treatment court, the juvenile must cooperate with and complete a preadmissions screening and evaluation assessment and must agree to cooperate with any future evaluation assessment as directed by the court. MCL 600.1064(3). MCL 600.1064(3) requires that all prescreening

assessments contain specific information. MCL 600.1064(3)(e) requires a juvenile offender's evaluation to contain "an assessment of the family situation including, as much as practicable, a comparable review of any guardians or parents."

If a juvenile who seeks admission to drug treatment court is charged with a criminal offense, the juvenile's admission must also comply with the conditions in MCL 600.1068, which states, in part:

"(1) If the individual being considered for admission to a drug treatment court is charged in a criminal case or, in the case of a juvenile, is alleged to have engaged in activity that would constitute a criminal act if committed by an adult, his or her admission is subject to all of the following conditions:

"(a) The offense or offenses allegedly committed by the individual must be related to the abuse, illegal use, or possession of a controlled substance or alcohol.

"(b) The individual, if an adult, must plead guilty to the charge or charges on the record. The individual, if a juvenile, must admit responsibility for the violation or violations that he or she is accused of having committed.

"(c) The individual must waive, in writing, the right to a speedy trial, the right to representation at drug treatment court review hearings by an attorney, and, with the agreement of the prosecutor, the right to a preliminary examination.

"(d) The individual must sign a written agreement to participate in the drug treatment court."

The prosecutor must approve of the juvenile's admission into the drug treatment court in conformity with the memorandum of understanding establishing the drug treatment court under MCL 600.1062. MCL 600.1068(2).

Traffic offenses. "An individual shall not be admitted to, or remain in, a drug treatment court pursuant to an agreement that would permit a discharge or dismissal of a traffic offense upon successful completion of the drug treatment court program." MCL 600.1068(3).

Victim and community statements. "In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written

statement to the court regarding the advisability of admitting the individual into the drug treatment court.” MCL 600.1068(4).

B. Making a Record Prior to Admission to Drug Court

Before a juvenile is admitted into a drug treatment court, the court must make certain findings. MCL 600.1066. MCL 600.1066 states that “the court shall find on the record, or place a statement in the court file pertaining to, all of the following:

“(a) The individual is dependent upon or abusing drugs or alcohol and is an appropriate candidate for participation in the drug treatment court.

“(b) The individual understands the consequences of entering the drug treatment court and agrees to comply with all court orders and requirements of the court’s program and treatment providers.

“(c) The individual is not an unwarranted or substantial risk to the safety of the public or any individual, based upon the screening and assessment or other information presented to the court.

“(d) The individual is not a violent offender.

“(e) The individual has completed a preadmission screening and evaluation assessment under [MCL 600.1064(3)] and has agreed to cooperate with any future evaluation assessment as directed by the drug treatment court.

“(f) The individual meets the requirements, if applicable, under . . . MCL 333.7411, . . . MCL 762.11, . . . MCL 769.4a, . . . MCL 771.1, . . . MCL 750.350a, or . . . MCL 750.430.*

“(g) The terms, conditions, and the duration of the agreement between the parties, especially as to the outcome for the participant of the drug treatment court upon successful completion by the participant or termination of participation.”

*These statutes are deferral statutes for specific crimes.

C. Accepting Plea

Once the court admits the juvenile into the drug treatment court, the court shall accept the juvenile’s admission of responsibility. The court may then either proceed to sentencing and include drug treatment court as a part of probation, or the court may defer sentencing until successful completion of drug treatment court. MCL 600.1070 states, in part:

“(1) Upon admitting an individual into a drug treatment court, all of the following apply:

“(a) For an individual who is admitted to a drug treatment court based upon having criminal charges currently filed against him or her, the court shall accept the plea of guilty or, in the case of a juvenile, the admission of responsibility.

“(b) For an individual who pled guilty to, or admitted responsibility for, criminal charges for which he or she was admitted into the drug treatment court, the court shall do either of the following:

(i) In the case of an individual who pled guilty to an offense that is not a traffic offense and who may be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the drug treatment court program, the court shall not enter a judgment of guilt or, in the case of a juvenile, shall not enter an adjudication of responsibility.

(ii) In the case of an individual who pled guilty to a traffic offense or who pled guilty to an offense but may not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the drug treatment court program, the court shall enter a judgment of guilt or, in the case of a juvenile, shall enter an adjudication of responsibility.

“(c) Pursuant to the agreement with the individual and the prosecutor, the court may either defer further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable in that case pursuant to that agreement, and place the individual on probation or other court supervision in the drug treatment court program with terms and conditions according to the agreement and as deemed necessary by the court.”

D. Admission to Drug Treatment Court Denied—Withdrawal of Plea

If a juvenile is denied admission to a drug treatment court after he or she has admitted responsibility and taken the other necessary steps for admission, the juvenile is entitled to withdraw his or her admission of responsibility. MCL 600.1068(5) states:

“An individual who has waived his or her right to a preliminary examination and has pled guilty or, in the case of a juvenile, has admitted responsibility, as part of his or her application to a drug treatment court and who is not admitted to a drug treatment court,

shall be permitted to withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, shall be permitted to withdraw his or her admission of responsibility.”

E. Court’s Continuing Jurisdiction

MCL 600.1070(2) states:

“The court shall maintain jurisdiction over the drug treatment court participant as provided in this act until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2. In the case of a juvenile participant, the court may obtain jurisdiction over any parents or guardians of the juvenile in order to assist in ensuring the juvenile’s continued participation and successful completion of the drug treatment court, and may issue and enforce any appropriate and necessary order regarding the parent or guardian of a juvenile participant.”

MCL 771.2(1) fixes a maximum two-year probation period for misdemeanors and a five-year maximum probation period for felonies. For stalking, a court may place an offender on probation for not more than five years; for aggravated stalking, a court may order probation for any term of years but not less than five years. MCL 771.2a(1)–(2). MCL 712A.2a, discussed in Section 14.1, governs a court’s continuing jurisdiction in cases under the Juvenile Code.

F. Successful Completion of Drug Treatment Court

In order to continue participating in and successfully complete a drug treatment court program, the juvenile must comply with all of the following:

- ♦ Pay all court ordered fines and costs, including minimum state costs.
- ♦ Pay the drug treatment court fee allowed under MCL 600.1070(4).
- ♦ Pay all court ordered restitution.
- ♦ Pay all crime victims rights assessments under MCL 780.905.*
- ♦ Comply with all court orders.

MCL 600.1074(1)(a)–(e).

The court is required to order a participant to pay all fines, costs, the fee, restitution, and assessments described above, and to pay all or any part of the costs of the treatment and the drug treatment court program services. However, the court may waive all or part of those fines, the fee, or costs of treatment if the court determines the payment would be a “substantial hardship for the individual or would interfere with the individual’s substance

*See Section 10.13 (renumbered with this update as 10.14) for more information on assessments under MCL 780.905.

abuse treatment.” MCL 600.1074(3). There is no provision for waiving payment of restitution or the crime victims rights assessment.

The court shall find on the record or place a written statement in the court file when a juvenile completes the drug treatment court program. The statement must indicate whether the juvenile successfully completed the program, or whether he or she was terminated from the program along with the reason for termination. MCL 600.1076(1).

When a juvenile successfully completes drug treatment court, the court must comply with the agreement that was made with the participant upon entering drug treatment court. MCL 600.1076(2) states:

“For a participant who successfully completes probation or other court supervision and whose proceedings were deferred or who was sentenced pursuant to [MCL 600.1070], the court shall comply with the agreement made with the participant upon admission into the drug treatment court, or the agreement as it was altered after admission by the court with approval of the participant and the prosecutor for that jurisdiction as provided in subsections (3) to (8).”

The court, with agreement of the prosecutor, and in conformity with the terms and conditions of the memorandum of understanding under MCL 600.1062, may discharge and dismiss the proceedings against a juvenile who meets all of the following criteria:

“(a) The individual has participated in a drug treatment court for the first time.

“(b) The individual has successfully completed the terms and conditions of the drug treatment court program.

“(c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.

“(d) The individual is not currently charged with and has not pled guilty to a traffic offense.

“(e) The individual has not previously been subject to more than 1 of any of the following:

“(i) Assignment to the status of youthful trainee under . . . MCL 762.11.

“(ii) The dismissal of criminal proceedings against him or her under . . . MCL 333.7411, . . . MCL 769.4a, . . . MCL 750.350a, . . . MCL 750.430.”* MCL 600.1076(4).

*These statutes govern deferred proceedings for specific crimes.

A discharge and dismissal under this subsection shall be without an adjudication of responsibility and are not a finding of responsibility for purposes of MCL 600.1076 or for purposes of disqualifications or disabilities imposed by law upon a finding of responsibility. MCL 600.1076(6).

The court may only enter one discharge and dismissal under MCL 600.1076(4) for an individual. MCL 600.1076(6).

The court shall send a record of the discharge and dismissal to the criminal justice information center of the state police. The state police shall enter that information into the law enforcement information network (LIEN) with an indication of participation by the individual in a drug treatment court. *Id.*

G. Adjudication and Disposition

Except as provided in subsection (F), above, if a juvenile successfully completed probation or other supervision, the court is required to comply with MCL 600.1076(7). MCL 600.1076(7) states:

“(7) Except as provided in subsection . . . (4), . . . if an individual has successfully completed probation or other court supervision, the court shall do the following:

“(a) If the court has not already entered an adjudication of guilt or responsibility, enter an adjudication of guilt or, in the case of a juvenile, enter a finding or adjudication of responsibility.

“(b) If the court has not already sentenced the individual, proceed to sentencing or, in the case of a juvenile, disposition pursuant to the agreement.

“(c) Send a record of the conviction and sentence or the finding or adjudication of responsibility and disposition to the criminal justice information center of the department of state police. The department of state police shall enter that information into the law enforcement information network with an indication of successful participation by the individual in a drug treatment court.”

H. Termination of Participation in Drug Treatment Court

If a drug treatment court participant is accused of a new crime, a judge must “consider whether to terminate the participant’s participation in the drug treatment program in conformity with the memorandum of understanding under [MCL 600.1062].” MCL 600.1074(2). If a drug treatment court participant is convicted of a felony offense that occurred after the participant’s admission into drug treatment court, the judge shall terminate the participant’s participation in the program. *Id.*

Upon a participant's termination from drug treatment court, the court shall find on the record or place a written statement in the court file indicating that the participant's participation was terminated and the reason for the termination. MCL 600.1076(1).

MCL 600.1076(8) states:

“(8) For a participant whose participation is terminated or who fails to successfully complete the drug treatment court program, the court shall enter an adjudication of guilt, or, in the case of a juvenile, a finding of responsibility, if the entering of guilt or adjudication of responsibility was deferred pursuant to [MCL 600.1070], and shall then proceed to sentencing or disposition of the individual for the original charges to which the individual pled guilty or, if a juvenile, to which the juvenile admitted responsibility prior to admission to the drug treatment court. Upon sentencing or disposition of the individual, the court shall send a record of that sentence or disposition and the individual's unsuccessful participation in the drug treatment court to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network, with an indication that the individual unsuccessfully participated in a drug treatment court.”

CHAPTER 10

Juvenile Dispositions

10.13 Crime Victim's Rights Fund Assessment

A. Assessments of Convicted and Adjudicated Offenders

Insert the following text on page 254 immediately before subsection (B):

“In order to continue to participate in and successfully complete a drug treatment court program,” an offender must pay all crime victims rights assessments. MCL 600.1074(1)(d).

CHAPTER 14

Review of Juvenile Dispositions

14.5 Dispositional Review Hearings for Juveniles Placed in Out-of-Home Care

Delete the first two paragraphs on page 305 and insert the following text:

*Effective
December 28,
2004.

MCR 3.945(A)(2)(a) states that “[i]f the juvenile is placed in out-of-home care, the court must hold dispositional review hearings no later than every 182 days after the initial disposition, as provided in MCL 712A.19(2).” 2004 PA 477* eliminated the current language in MCL 712A.19(2) governing dispositional review hearings for juveniles placed in foster care. MCL 712A.19(2) now governs children placed in their own homes. MCL 712A.19(2) states in relevant part:

“ . . . if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. . . . ”

CHAPTER 14

Review of Juvenile Dispositions

14.9 Recording Dispositional Review Hearings

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. Delete the last sentence of this section. MCL 712A.19(2) no longer provides for a rehearing that must be recorded stenographically.

CHAPTER 23

Selected Issues Regarding Imposition of Adult Sentence

23.4 Alternative Sentences for Major Controlled Substance Offenses

On page 476, after the last sentence insert the following text:

* 2004 PA 219.

Effective January 1, 2005,* the court may also require a probationer to participate in a drug treatment court. MCL 771.3(2)(g).

CHAPTER 24

Appeals

24.10 Appointment of Appellate Counsel

Insert the following text after the last paragraph on page 486:

The United States Supreme Court reversed the Sixth Circuit's decision in *Tesmer v Granholm** but did not address the constitutionality of MCL 770.3a because the Court concluded that the plaintiffs lacked standing to challenge Michigan's procedure on behalf of "hypothetical indigents." *Kowalski v Tesmer*, 543 US ____ (2004). Consequently, the controlling rule in Michigan is that set forth in *People v Bulger*, 462 Mich 495 (2000)—Michigan's Constitution does not require that indigent defendants be appointed counsel to pursue discretionary appeals.

*See the August 2003 update to page 486 for a discussion of the Sixth Circuit's decision in *Tesmer v Granholm*.

CHAPTER 25

Recordkeeping & Reporting Requirements

25.2 Access to Family Division Records and Confidential Files

After the first paragraph on page 492, insert the following text:

If a juvenile successfully completes participation in drug treatment court and the proceedings are discharged and dismissed, all records regarding the juvenile's participation are closed to public inspection and are exempt from disclosure under the Freedom of Information Act. MCL 600.1076(6).